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RYAN NEAL SIMMONS,)
)
Appellant-Defendant,)
)
vs.) No. 79A05-0712-CR-668
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

BAKER, Chief Judge

Appellant-defendant Ryan Neal Simmons appeals the seven-year sentence with two years suspended to probation that was imposed after he pleaded guilty to Conspiracy to Commit Intimidation,¹ a class C felony. Specifically, Simmons claims that his sentence must be set aside because the trial court placed too much weight on the aggravating circumstances and too little weight on the mitigating factors that it identified at the sentencing hearing. Simmons also contends that the sentence was inappropriate when considering the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

On January 28, 2007, Simmons and several other individuals were at Preston Stickrod's West Lafayette apartment drinking beer and playing video games. At some point, Stickrod received a telephone call informing him that Ray Davis had robbed Derrick Goodman during a drug deal. Stickrod telephoned others and eventually thirteen people—including Simmons—assembled in Stickrod's apartment and agreed to drive to Davis's residence and threaten Davis to return either the money or Stickrod's drugs that had been taken during the alleged robbery.

Simmons drove several of the individuals, who were armed with baseball bats, to Davis's residence. Although Simmons claimed that he did not leave his vehicle once they arrived at Davis's house, several of the individuals broke into Davis's house, threatened Davis with the baseball bats, stole Davis's property, and eventually beat Davis

¹ Ind. Code § 35-45-2-1.

with the bats. Davis suffered extensive injuries from the beating and was in an induced coma for a week because of hemorrhaging in the brain. After Davis was released from the hospital, he suffered from seizures every day and had to use a walker.

Following the incident, the State charged Simmons with thirteen felony offenses including burglary, robbery, aggravated battery, theft, conspiracy to commit those offenses, and one count of conspiracy to commit intimidation. On September 7, 2007, Simmons negotiated a plea agreement with the State, pursuant to which he agreed to plead guilty to one count of conspiracy to commit intimidation. In exchange, the State agreed to dismiss all remaining charges, and the parties were to argue the appropriate sentence to the trial court. Approximately one week prior to Simmons's sentencing hearing, Davis died from his injuries.

On October 2, 2007, the trial court sentenced Simmons to seven years of incarceration with five years executed and two years suspended to probation. The trial court also ordered Simmons to serve three years at the Department of Correction with the remaining two years of the executed sentence to be served in community corrections. Simmons was also ordered to make restitution.

In arriving at the sentence, the trial court identified Simmons's criminal history and the extensive injuries that were inflicted upon Davis as aggravating factors. The trial court also found that the hardship on Simmons's dependents and his efforts to change his life since the arrest were mitigating circumstances. However, the trial court determined that the aggravating circumstances outweighed the mitigating circumstances. Simmons now appeals.

DISCUSSION AND DECISION

I. Weight of Aggravating and Mitigating Factors

Simmons claims that his sentence must be set aside because the trial court “overstated the aggravating factors as they related to Mr. Simmons—when viewed under all the circumstances, his mitigators amply counterbalance the aggravators.” Appellant’s Br. p. 7. In other words, Simmons argues that the trial court placed too much weight on the aggravating factors that were found and too little weight on the mitigating circumstances.

At the outset, we note that in Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (Ind. 2007), our Supreme Court held that trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court’s reasons for imposing a particular sentence. Id. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id.

We review sentencing decisions for an abuse of discretion. Id. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

Although Simmons argues that the trial improperly balanced aggravating and mitigating circumstances, his claim is not available for appellate review. In particular,

the Anglemyer court held that a trial court can no longer be said to have abused its discretion in weighing those factors. Id. at 491. Thus, because the weight of aggravating and mitigating circumstances is no longer a viable appellate sentencing issue, we will only consider Simmons's challenge to the appropriateness of the sentence. Id.

II. Appropriateness Review

Simmons maintains that his sentence is inappropriate in light of the nature of the offense and his character. More specifically, Simmons argues that his sentence should be reduced to no more than the four-year advisory sentence² because of his "minimal involvement in the underlying offense, the staleness of his criminal history, balanced against his significant efforts at rehabilitating himself before sentencing, and undue hardship to his dependents." Appellant's Br. p. 1.

In reviewing an appropriate sentence challenge under Indiana Appellate Rule 7(B), we defer to the trial court. Stewart v. State, 866 N.E.2d 8589, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of the offense, the evidence established that Simmons willingly conspired with several others to threaten and intimidate Davis. Several of the individuals threatened Davis while armed with baseball bats. Tr. p. 15-18, 26-27. Although Simmons claimed that he did not know that the other defendants intended to injure Davis,

² Indiana Code section 35-50-2-6 provides that "[a] person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years."

the evidence established that everyone involved had discussed the proposed plan in Stickrod's apartment. Moreover, Simmons drove some of the others to Davis's residence. Id. at 26-27, 35-38. Given these circumstances, we find it unlikely that Simmons was not aware that the others were in possession of the baseball bats and intended to injure Davis. As a result, Simmons's nature of the offense argument does not aid his inappropriateness claim.

Turning to Simmons's character, the record shows that although Simmons's record is not extensive, he has previous convictions for violence and drug-related offenses. More specifically, Simmons has two assault convictions and a felony drug possession conviction for LSD. Appellant's App. p. 264-65. Simmons also admitted using marijuana over a long period of time, demonstrating his disdain for the law and the commission of criminal offenses for which he has escaped punishment. Id. at 267.

Although Simmons attempts to lessen the impact of his criminal behavior and drug use by pointing out the hardship that his dependents will suffer, he has failed to show that the hardship on his dependents is any different than any other defendant faced with incarceration. Finally, even though Simmons may have made efforts to rehabilitate himself since the arrest by undergoing training for a job and obtaining steady employment, we cannot say that the sentence imposed by the trial court was inappropriate in light of the nature of the offense and Simmons's character.

The judgment of the trial court is affirmed.

RILEY, J., concurs.

ROBB, J., concurs in result.